

M.E.C. Corp. and Massachusetts Laborers' Benefit Funds. Case 31-CA-28985

December 7, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge and an amended charge filed by the Union on December 27, 1991, and January 16, 1992, respectively, the General Counsel of the National Labor Relations Board issued a complaint against the Respondent, M.E.C. Corp., alleging that it has engaged in certain unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act. On April 16, 1992, the Respondent filed an answer admitting in part, denying in part, and seeking clarification of certain allegations of the complaint. On September 14, 1992, the General Counsel issued an amendment to the complaint, and on September 18, the Respondent filed an answer to the complaint as amended, admitting to all the allegations.

On October 21, 1992, the General Counsel filed a Motion for Summary Judgment. On October 23, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent having admitted to all the allegations of the complaint as amended, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, M.E.C. Corp., a contractor in the construction industry, is a corporation with an office and place of business in South Boston, Massachusetts. During the 12-month period ending December 1991, it provided services valued in excess of \$50,000 for Suffolk Construction Company, an enterprise within the Commonwealth of Massachusetts which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, Massachusetts Laborers' District Council, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About November 7, 1991, the Respondent entered into an "Acceptance of Agreement and Declaration of Trust," which binds the Respondent, retroactive to at least June 1, 1991, to the terms and conditions of employment of the collective-bargaining agreement between the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Massachusetts Laborers' District Council, which is effective from June 1, 1991, through May 31, 1994, and recognized the Union as the exclusive collective-bargaining representative of the unit for that period of time.

Since on or about June 30, 1991, the Respondent has refused to pay the fringe benefit amounts which have become due under articles XI, XII, XIII, XIV, XV, and XVI of the 1991-1994 agreement.

Since on or about December 26, 1991, the Respondent has refused to comply with the Funds' December 26, 1991 request, as the authorized agent of the Union, to audit the Respondent's books and records, information that is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit.

We find that by the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing to pay the fringe benefit amounts which have become due under articles XI, XII, XIII, XIV, XV, and XVI of the 1991-1994 collective-bargaining agreement and by refusing to comply with the Funds' request, as the authorized agent of the Union, to audit the Respondent's books and records, information that is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit, the Respondent has failed and refused to bargain collectively with the representative of its employees within the meaning of Section 8(d) of the Act and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that the Respondent make the contractually required benefit fund contributions it has unlawfully refused to make and to pay to the Funds any additional

amounts due in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979), and to reimburse its unit employees for any expenses ensuing from its unlawful failure to make the required benefit fund contributions, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir 1981). Interest on amounts owing to employees shall be paid as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to furnish the requested information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, M.E.C. Corp., South Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to pay the fringe benefit amounts which have become due under articles XI, XII, XIII, XIV, XV, and XVI of the 1991-1994 collective-bargaining agreement with Massachusetts Laborers' District Council.

(b) Failing and refusing to permit the Funds, as the authorized agent of the Union, to conduct an audit of the Respondent's books and records, information that is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the contractually required fringe benefit amounts to the Funds, and reimburse employees for any expenses ensuing from its unlawful refusal to make the benefit fund payments, as set forth in the remedy section of this decision. The unit is:

All laborers employed by and to Respondent, but excluding guards and supervisors as defined in the Act.

(b) On request, permit the Funds, as the authorized agent of the Union, to conduct an audit of its books and records, information that is necessary and relevant to the Union's duties as the exclusive representative of the unit.

(c) Post at its facility in South Boston, Massachusetts, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Rela-

Regional Director, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

tions Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to pay the fringe benefit amounts which have become due under articles XI, XII, XIII, XIV, XV, and XVI of the 1991-1994 collective-bargaining agreement with Massachusetts Laborers' Council.

WE WILL NOT refuse to permit the Funds, as the authorized agent of the Union, to conduct an audit of our books and records, information that is necessary and relevant to the Union's performance of its function as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay the contractually required fringe benefit amounts to the Funds, and WE WILL reimburse our unit employees for any expenses ensuing from our failure to pay such amounts. The unit is:

All laborers employed by and to Respondent, but excluding guards and supervisors as defined in the Act.

WE WILL, on request, permit the Union to conduct an audit of our books and records, information which is necessary and relevant to the Union's duties as your exclusive representative.

M.E.C. CORP.